

REMARKS

The above-identified Application has been carefully reviewed with the Office Action of June 6, 2008, the Examiner's comments, and the art references cited therein in mind. In response thereto, Applicant submits the following arguments in support of patentability. Favorable reconsideration is hereby respectfully requested.

Claims 1-20 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Bonutti (U.S. Patent No. 5,888,196). The Office Action takes the position that in Figs. 9 and 10 of Bonutti, the perforation means 142 can be used for perforating the pouch 150; and securing means 72 for securing a hollow tube 14 to the pouch 150; wherein the hollow tube 14 formed by anchor means 62 acting from the inside of the pouch 150; wherein the anchor means 62 are capable of being deployed by a control member 144; fluid removal means at 26 for removing the fluid outside of the body of the patient; wherein the anchor means 62 are formed by a structure forming a hinged truss and at least one anchor arm; wherein the hollow tube 14 capable of having a guide wire disposed within the hollow tube 14; wherein the control member 144 organized to make it possible for a user to exert at least traction and compression forces on the guide wire; wherein the at least one weak segment at 62 extends parallel to the axis of symmetry of the hollow tube 14 between the front section and the back section; wherein the weak segments at 62 are of identical type; wherein the at least one weak segment at 62 is constituted by a slit or by slits; wherein the external connector 16 is secured in leaktight manner to the proximal portion at 34, so the cavity and internal volume form a single volume, the guide wire occupying sufficiently little space in said single volume for it to be possible to provide a space for passing a fluid sucked out via tubular end-pieces 146 in the hollow tube 14 and further wherein the flexible pouch 150 is an intra-gastric balloon designed to be used in treating obesity.

A proper rejection of a claim under 35 U.S.C. §102 requires that a single prior art reference disclose each element of the claim. See, e.g., *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983). Anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference. See e.g., *In re Paulsen*, 30 F.3d 1475, 31 USPQ 2d 1671 (Fed. Cir. 1994); *In re Spada*, 911 F.2d 705, 15 USPQ 2d 1655 (Fed. Cir. 1990).

This rejection is believed to be in error and is respectfully traversed. Each and every element of the Applicant's claims are not disclosed in the Bonutti reference. Initially, it is noted that the device disclosed in Bonutti is a surgical device, while the claimed device is a medical device. This is an important difference, because a surgical device is suitable for penetrating surgically into the human body, i.e. through an incision, while a medical device is designed specifically to penetrate into the human body through natural passageways (such as the mouth and the esophagus) without incision. This distinction between medical and surgical is well known in the field. An extract of dictionary.com is provided herewith as Exhibit A in order to illustrate this distinction. In other words, the claimed device is suitable for insertion into the human body through natural passageways, which means for example that it is long, flexible and smooth enough for that purpose.

There is no indication that Bonutti's device would be suitable for a medical use. In contrast, Bonutti states expressly that the retractor disclosed is "for use in surgery" (col. 1, lines 14-15) and more specifically for use in arthroscopic surgery. Indeed, Bonutti maintains that in arthroscopic surgery, the instrument must be strong enough and precise enough for use in that field. Bonutti states that a great deal of force is needed to selectively move tissue such as muscles, bones, and tendons and expand a potential space therein and that one must have a strong, sufficiently rigid instrument to do this. Furthermore, Bonutti's device is extremely short ("about 85 mm long", see col. 12, lines 4-5) and very rigid ("to be insertable within a joint or

among muscles, tendons, and bones” see col. 2, lines 9-12).

In addition, it is believed apparent that Bonutti’s device has no perforation means as claimed. The embodiment pointed out by the office, namely Figures 9 and 10, has a “pointed distal end 142” used only for “easier passage through tissues” (col. 7, lines 41-42). Therefore, the end 142 is only designed for making it easier for the retractor to progress among the tissues. This does not imply that the end 142 is sharp enough to be suitable for perforating a pouch containing a fluid. On the contrary, it is clear that Bonutti’s device is a retractor, and not a device for cutting or perforating tissues. In this regard, it is clearly stated in Bonutti (col. 1, lines 59-63) that “delicate tissue such as nerve tissue or blood vessels is put at risk and can be damaged during an operation”. This is believed clear that end 142 is not suitable for perforation of anything, as presently claimed.


Bonutti also has nothing to do with a device for explanting a pouch with anchor means designed to act from the inside of the pouch. Thus, Bonutti lacks additional claimed features, namely securing means formed by anchor means that act from the inside of the pouch and a portion of the inside facing the envelope to generate bearing engagement sufficient to enable the pouch to be explanted.

In view of the foregoing, it is believed that the explanation will be sufficient to remove the rejection of the claims over the Bonutti reference and thereby result in the allowance of all of the pending claims.

CONCLUSION

With the amendments presented herein, it is believed that all the claims remaining in the Application are in condition for allowance. Early and favorable action in this regarding is hereby respectfully requested. Should there be any minor informalities remaining, the Examiner is respectfully requested to call the undersigned attorney so that this case may be passed to issue at an early date.

Respectfully submitted,


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